

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
MCALLEN DIVISION

ACT PROFESSIONAL PLAZA

Plaintiff,

v.

SCOTTSDALE INSURANCE COMPANY

Defendant.

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CIVIL ACTION NO. 7:16-cv-416

NOTICE OF REMOVAL

Defendant, Scottsdale Insurance Company (“Defendant”), through undersigned counsel and pursuant to 28 U.S.C. §§ 1332, 1441 and 1446, files this Notice of Removal of the lawsuit captioned *Act Professional Plaza v. Scottsdale Insurance Company*; Cause No. C-2766-16-F, in the 332nd Judicial District of Hidalgo County, Texas.

**I.
BACKGROUND**

1. Plaintiff Act Professional Plaza (hereinafter “Plaintiff”) initiated the present action by filing its Original Petition in Cause No. C-2766-16-F, in the 332nd Judicial District of Hidalgo County, Texas on July 9, 2016 (the “State Court Action”). *See* Plaintiff’s Original Petition, attached as **Exhibit A**.

2. Defendant appeared and answered on July 14, 2016, asserting a general denial to the claims and allegations made in Plaintiff’s Original Petition. *See* Defendant’s Original Answer, attached as **Exhibit B**.

3. Pursuant to 28 USC § 1446(a) and Local Rule 81, a copy of all process, pleadings, and orders served upon Defendant in the State Court Action not otherwise specifically identified as separate exhibits have been requested and will be filed upon receipt.

4. Pursuant to 28 U.S.C. § 1446(d), promptly after filing this Notice of Removal, Defendant will give written notice of the removal to Plaintiff through its attorneys of record, and to the clerk of the 332nd Judicial District of Hidalgo County, Texas.

5. Pursuant to 28 USC §§ 1446(b)(1) and 1446(c)(1) this Notice of Removal has been timely filed within 30 days of service on Defendant of Plaintiff's Original Petition and less than one year after the commencement of this action.

II. JURISDICTION

6. This Court has original jurisdiction pursuant to 28 U.S.C. § 1332, and the matter is removable to this Court pursuant to 28 U.S.C. § 1441(a) because there is complete diversity of citizenship between the properly joined parties and the amount in controversy exceeds \$75,000 exclusive of interest and costs.

A. Diversity of Parties

7. Plaintiff's principal place of business is in Hidalgo County, Texas. *See Exhibit A*, ¶ 2. Pursuant to 28 U.S.C. § 1332(a), therefore, Plaintiff is a citizen of the State of Texas.

8. Scottsdale Insurance Company is organized under the laws of Ohio and maintains its principal place of business in Arizona. Pursuant to 28 U.S.C. § 1332(c)(1), therefore, Scottsdale is a citizen of the States of Ohio and Arizona.

9. Accordingly, there is complete diversity between the parties pursuant to 28 U.S.C. § 1332(a).

B. Amount in Controversy

10. Plaintiff has failed to state an amount of monetary relief requested in its Original Petition, in compliance with Texas Rule of Civil Procedure 47. **Exhibit A**; Tex. R. Civ. P. 47(c). Plaintiff's refusal to comply with Rule 47, like others cases where plaintiffs manipulate the damage ranges allowed under the rule, is indicative of a bad faith attempt to avoid federal jurisdiction. *See Garcia v. Kellogg USA, Inc.*, No. 7:13-CV-00347, 2013 WL 4735169, at *1 (S.D. Tex. Sept. 3, 2013) *see also Ford v. United Parcel Serv., Inc. (Ohio)*, No. 3:14-CV-1872-D, 2014 WL 4105965, at *2 (N.D. Tex. Aug. 21, 2014). Plaintiff has pled that it seeks compensation for (1) actual damages, (2) consequential damages, (3) mental anguish, (4) treble damages, (5) 18% penalty interest attorney's fees, (4) mental anguish damages, (6) court costs, (7) attorney's fees, and (8) exemplary damages to be determined by the jury. *See Exhibit A*, ¶¶ 41-46. Plaintiff has alleged that Defendant's conduct was wrongful and done knowingly, entitling it to a trebling of actual damages under Texas Insurance Code Chapter 541. *See Exhibit A*, ¶ 38; Tex. Ins. Code sections 541.002 & 541.152. Penalties, exemplary damages, and attorneys' fees are included as part of the amount in controversy. *See H&D Tire & Automotive-Hardware, Inc. v. Pitney Bowes Inc.*, 227 F.3d 326, 330 (5th Cir. 2000).

11. Plaintiff's counsel sent Defendant a pre-suit demand letter pursuant to the Texas Insurance Code wherein Plaintiff's counsel claimed economic damages in the amount of \$61,450.11, consequential damages in the amount of \$37,500, and \$30,147.50 in expenses and attorney's fees. *See* June 2, 2016 demand letter, attached as **Exhibit C**, at p. 2. Plaintiff's alleged economic damages, when considered in light of its request for trebled damages under the Texas Insurance Code, alone exceed the jurisdictional requirements for diversity jurisdiction.

12. The amount in controversy plainly exceeds \$75,000, exclusive of interest and costs. *See Exhibits A and C.* Accordingly, the amount in controversy requirement of 28 U.S.C. § 1332(b) is satisfied.

III. CONCLUSION

13. Removal of this action under 28 U.S.C. § 1441(b) is proper as the district courts of the United States have original jurisdiction over the matter pursuant to 28 U.S.C. 1332, and as all requirements for removal under 28 U.S.C. § 1446 have been met.

14. WHEREFORE, Defendant Scottsdale Insurance Company hereby provides notice that this action is duly removed.

Respectfully submitted,

/s/ Patrick M. Kemp

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CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing has been served upon the following counsel of record via certified mail, return receipt requested on this 18th day of July, 2016.

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/s/ Patrick M. Kemp
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